

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS

VICTOR MANUEL TOVAR-FLORES,

Petitioner,

v.

**CIVIL ACTION NO. 2:15-CV-100
(BAILEY)**

J. SAAD, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Robert W. Trumble [Doc. 11]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Trumble filed his R&R on May 10, 2016, wherein he recommends this matter be denied and dismissed without prejudice to the petitioner's right to seek certification from the Fifth Circuit Court of Appeals to file a second or successive § 2255 motion.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v.*

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Trumble's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on May 12, 2016 [Doc. 12]. To date, no objections have been filed, and the time within which to do has expired. Accordingly, this Court will review the R&R for clear error.

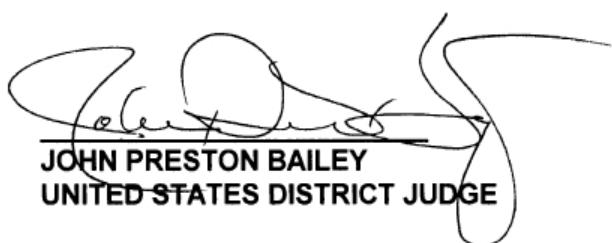
Conclusion

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Doc. 11]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that this matter be **DENIED** and **DISMISSED WITHOUT PREJUDICE** to the petitioner's right to seek certification from the Fifth Circuit Court of Appeals to file a second or successive § 2255 motion. This Court further **DIRECTS** the Clerk to enter judgment in favor of the defendant and to **STRIKE** this case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: May 31, 2016.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE